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EDEN SURGICAL CENTER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDEN SURGICAL CENTER, a
California medical corporation,

Plaintiff,

vs.

ACTIVISION BLIZZARD, INC., in its
capacity as Plan Administrator of the
ACTIVISION BLIZZARD HEALTH
AND WELFARE BENEFITS PLAN;
ACTIVISION BLIZZARD HEALTH
AND WELFARE BENEFITS PLAN,

Defendants.

) Case No.:

)
) **COMPLAINT PURSUANT TO THE**
) **EMPLOYEES RETIREMENT**
) **INCOME SECURITY ACT OF 1974**
) **FOR:**

1. **DISCLOSURE AND
STATUTORY PENALTIES
UNDER 29 U.S.C. §1132(c) AND
29 U.S.C. §1132(a)(1)(A);**
2. **DISCLOSURE UNDER
29 C.F.R. §2560.503-1**
3. **BENEFITS UNDER 29 U.S.C.
§1132(a)(1)(B).**
4. **BREACH OF IMPLIED
CONTRACT**
5. **BREACH OF ORAL
CONTRACT**
6. **NEGLIGENT
MISREPRESENTATION**

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1 Plaintiff Eden Surgical Center (“Eden”) respectfully alleges as follows:

2 1. Eden at all times mentioned herein, was and is a California medical
3 corporation conducting business in the County of Los Angeles, in the State of
4 California.

5 2. Eden is informed and believes, and on that basis alleges, that defendant
6 Activision Blizzard Health and Welfare Benefits Plan (the “Plan”) is a self-funded
7 employee welfare benefit plan governed by the Employee Retirement Income
8 Security Act of 1974 (“ERISA”) that can be found and is administered in the
9 County of Los Angeles, in the State of California.

10 3. Eden is informed and believes, and on that basis alleges, that defendant
11 Activision Blizzard, Inc., is the plan administrator for the Plan (the “Plan
12 Administrator”), and that this defendant can be found in the County of Los
13 Angeles, in the State of California.

14 4. The jurisdiction of this Court is proper under 29 U.S.C. §1132(e), as
15 this is a civil action under Section 502 of ERISA.

16 5. The venue of this action in this Court is proper under 29 U.S.C.
17 §1132(e)(2), as these defendants may be found, and the Plan is administered in
18 California's Central Judicial District, in the County of Los Angeles, State of
19 California.

20 **Eden’s Standing**

21 6. With respect to its first three causes of action for disclosure, statutory
22 penalties and benefits, Eden hereby sues these defendants derivatively, appearing
23 before this Court as the assignee of its patient, the plan participant who, for the
24 purposes of privacy, is identified by her initials as “AR” (the “Plan Participant”).
25 As a derivative suitor, Eden stands in the shoes of the assignor, and invokes the
26 jurisdiction of the Court to enforce the Plan Participant’s ERISA rights.

27 7. Subject matter jurisdiction of this Court is proper under 28 U.S.C.
28 §1331, as Eden possesses and presents a colorable claim under ERISA.

8. With respect to its fourth, fifth and sixth claims for breach of implied contract, breach of oral contract and negligent misrepresentation, Eden hereby sues these defendants under the supplemental jurisdiction established by 28 U.S.C. § 1367. These state law claims are substantially related to the above-mentioned ERISA claims, and jurisdiction in this case is not based on diversity.

Eden's Claims

9. Eden is informed and believes, and on that basis alleges, that at all times mentioned herein, the Plan Participant was a covered beneficiary under the Plan.

10. Eden is informed and believes, and thereon alleges that Cigna Health and Life Insurance Company ("Cigna") serves as the claims administrator for the Plan.

11. Prior to providing medical care to the Plan Participant, Eden verified with the Plan that the Plan Participant was a covered beneficiary under the Plan. Eden specifically requested and was provided confirmation from an agent of the Plan, the Plan's contracted agent, that certain specific contemplated medical procedures required to treat the Plan Participant were covered by the Plan, and that the Plan Participant was eligible to receive medical benefits for such procedures. Eden inquired as to whether the Plan contains an anti-assignment provision, and was advised that it does not. Eden recorded the entirety of this conversation. A relevant portion of the transcript from Eden's recorded benefits verification call is as follows:

Eden: Does the code for the procedure require pre-certification?

Plan: That code does not require pre-cert.

Eden: This facility has a Multiplan contract...will that contract apply or be used to determine benefits?

Plan: Yes, the Multiplan contract will apply for benefits.

1 Eden: Will the Multiplan contract override the Medicare rate?

2 Plan: Yes.

3 Eden: Does the Plan contain an anti-assignment provision?

4 Plan: No.

5 12. At no point in time during this benefit verification process did these
6 defendants or their representatives inform Eden that the Plan contains an anti-
7 assignment provision, or that Eden's claims and/or related rights might be affected
8 in any manner by an anti-assignment provision, despite Eden's specific inquiry.
9 During the above-mentioned call, Eden inquired as to whether its claims would be
10 paid according to Eden's Multiplan contract, and was advised that they would.

11 13. Prior to receiving medical care from Eden, the Plan Participant
12 assigned her benefits and ERISA representative rights under the Plan to Eden (the
13 "Assignment"). A redacted copy of the Assignment is attached to this Complaint
14 as Exhibit "1". Based on the Assignment, Eden is a "beneficiary" of the Plan
15 under 29 U.S.C. §1002(8), and thus stands in the shoes of the Plan Participant.

16 14. Based upon the information provided and the representation of
17 coverage made to Eden by the Plan, Eden provided medical procedures to the Plan
18 Participant on May 1, 2015.

19 15. Following these medical services, Eden submitted required claim
20 information, including itemized revenue codes with accompanying fees and
21 expenses, to the Plan for reimbursement ("Eden's Claim").

22 16. Thereafter, the Plan issued an adverse benefit determination on Eden's
23 Claim, whereby the claim was paid at a drastically reduced rate. An Explanation
24 of Benefits ("EOB") provided by the Plan provided Eden with no meaningful
25 information.

26 **Eden's Document Production Demand**

27 17. On July 7, 2015, Eden demanded, in writing, that these defendants
28 produce the contracts, agreements and documents under which the Plan is

1 established and/or operated, including all relevant information, records and
2 documents regarding the processing of Eden's Claim (the "Documents"), pursuant
3 to 29 U.S.C. §1024(b)(4) and 29 C.F.R. §2560-503.1 paragraphs (g), (h) and (m).
4 In this letter, Eden advised the defendants that it represented the Plan Participant
5 in all matters relating to Eden's Claim as a representative and an assignee under
6 the Assignment. On July 7, 2015, The Plan's Senior Director of Legal
7 Employment and Benefits responded that the Plan would review Eden's letter.
8 Thereafter, the Plan produced several documents and referred the matter to
9 Cigna's legal department. No additional documents were provided, and Eden did
10 not receive any explanation of how the adverse benefit determination was
11 processed.

12 18. On July 7, 2015, Eden also appealed the adverse benefit determination
13 on Eden's Claim to Cigna. A copy of Eden's appeal was sent to the Plan. Eden
14 received a response from an Appeals Processor at Cigna named "June P." dated
15 July 10, 2015. June P.'s response merely stated: "I have decided to uphold the
16 original decision in processing this claim. This decision represents the final step
17 of the internal administrative review process... you have the right to bring a legal
18 action under section 502(a) of ERISA." These defendants thus failed and refused,
19 and continue to fail and refuse to respond to Eden's requests for all of the
20 Documents, which include all relevant information, records, and documents under
21 29 U.S.C. §1024(b)(4) and 29 C.F.R. §2560.503-1.

22 19. Administrative remedies were exhausted with respect to Eden's Claim
23 based on the defective notice provided by these defendants.

24 20. As of the date this lawsuit was filed, Eden's Claim was processed in a
25 manner that does not comport with the information provided during the recorded
26 verification process, and Defendants failed and refused to explain this discrepancy
27 or provide evidence explaining or justifying the claims reimbursement process.
28

1 Because Eden lacked any other reasonable way to access to the requested
2 information, it was necessary to file this lawsuit.

3
4 **FIRST CAUSE OF ACTION**
5 **FOR DISCLOSURE AND STATUTORY PENALTIES FOR**
6 **FAILURE TO DISCLOSE REQUIRED DOCUMENTS**
7 **UNDER 29 U.S.C. §1024(b)(4)**

8 21. Eden realleges and incorporates herein by this reference paragraphs 1
9 through 20, inclusive, of this Complaint.

10 22. As an ERISA fiduciary and plan administrator, the Plan Administrator
11 had a duty to disclose the Documents upon receiving Eden's written request, and
12 if necessary, to obtain any such documents not in its possession from subordinate
13 claims administrators.

14 23. The Plan Administrator breached this duty by failing to produce
15 Documents after receiving Eden's written request, in violation of 29 U.S.C.
16 §1024(b)(4).

17 24. The Plan Administrator's failure to produce the Documents and
18 participate in the administrative process and provide a full and fair review denied
19 Eden the opportunity to know exactly where it stands with respect to the Plan and
20 the operation thereof regarding the administration and processing of Eden's
21 Claim. In addition, The Plan Administrator's failure to produce the Documents
22 negatively impacted and continues to negatively impact Eden's ability to appeal
23 and pursue the unpaid benefits at issue in this lawsuit. To date, the Plan
24 Administrator has not produced all of the required Documents, has not
25 participated in the administrative process and is believed to be withholding the
26 Documents for strategic purposes.

27 25. Accordingly, the Plan Administrator should be ordered to disclose all
28 of the Documents, and subject to the statutory penalty prescribed by 29 U.S.C.

1 §1132(c), in the amount of \$110.00 per day, per claim, commencing on August 7,
2 2015, through and including the date judgment is entered in this action, or the date
3 that all of the Documents are received, whichever comes first.

4 26. In addition, Eden is entitled to an award of the reasonable attorneys'
5 fees incurred in this action, pursuant to 29 U.S.C. §1132(g)(1).

6 **SECOND CAUSE OF ACTION**
7 **FOR DISCLOSURE OF REQUIRED DOCUMENTS**
8 **UNDER 29 C.F.R. §2560.503-1.**

9 27. Eden realleges and incorporates herein by this reference paragraphs 1
10 through 26, inclusive, of this Complaint.

11 28. As an ERISA fiduciary and administrator of the Plan, the Plan
12 Administrator had a duty to disclose the Documents upon receiving Eden's written
13 request, and if necessary, to obtain any such documents not in its possession from
14 subordinate claims administrators.

15 29. The Plan Administrator breached this disclosure duty by failing and
16 refusing to produce relevant Documents after receiving Eden's written request, in
17 violation of 29 C.F.R. §2560.503-1 paragraphs (g), (h) and (m).

18 30. The Plan Administrator's failure to produce Documents denied Eden
19 the opportunity to know exactly where it stands with respect to the Plan and the
20 operation thereof regarding the administration and processing of Eden's Claim. In
21 addition, the Plan Administrator's failure to produce Documents negatively
22 impacted and continues to negatively impact Eden's ability to appeal and pursue
23 the unpaid benefits at issue in this lawsuit. To date, the Plan Administrator has
24 not produced all of the required Documents, and is presently withholding the
25 Documents for strategic purposes.

26 31. Accordingly, the Plan Administrator should be ordered to immediately
27 disclose all of the Documents, in accordance with the Regulations.
28

THIRD CAUSE OF ACTION

FOR BENEFITS

UNDER 29 U.S.C §1132(a)(1)(B)

32. Eden realleges and incorporates herein by this reference paragraphs 1 through 31, inclusive, of this Complaint.

33. As the Plan Participant's assignee, Eden is entitled to receive certain benefits under the Plan.

34. Eden was unlawfully denied these benefits with regard to Eden's Claim.

35. Eden's appeal of the subject adverse benefit determination was met with no meaningful response.

36. Eden attempted to gain information regarding the subject adverse benefit determinations, but its requests for disclosure were rebuffed by the Plan Administrator and the Plan, as they failed to produce all of Documents before this lawsuit was filed. To date, the Plan Administrator has not produced all of the required Documents, and is presently withholding certain of the Documents for strategic purposes.

37. Eden is entitled to damages as compensation for the benefits it was entitled to receive but unlawfully denied by the Plan, in an amount to be proven at trial.

38. In addition, Eden is entitled to an award of the reasonable attorneys' fees incurred in this action, pursuant to 29 U.S.C. §1132(g)(1).

FOURTH CAUSE OF ACTION

FOR BREACH OF IMPLIED CONTRACT

39. Eden realleges and incorporates herein by this reference paragraphs 1 through 38, inclusive, of this Complaint.

1 40. Prior to providing services to the Plan Participant, Eden informed these
2 defendants that the Plan Participant was scheduled for certain medically necessary
3 surgical procedures at Eden.

4 41. These defendants confirmed that the Plan covered the medical services,
5 supplies and equipment Eden eventually provided to the Plan Participant. Eden
6 recorded the benefit verification process.

7 42. Medical providers routinely contact plan administrators to verify
8 coverage prior to providing health care services. This is the way health care
9 providers conduct business every day. Eden and these defendants understood that,
10 based on the representations of coverage upon which Eden reasonably relied, by
11 providing medically necessary services, Eden would be paid by these defendants
12 for the medically necessary services, supplies and equipment at the agreed rate of
13 compensation. Under the terms of the Plan, Eden was entitled to reimbursement
14 consistent with its Multiplan contract, after the Plan Participant's deductible and
15 out of pocket expenses were met.

16 43. These defendants understood that Eden's provision of medical
17 services, supplies and equipment to the Plan Participant would require
18 reimbursement in the manner described above.

19 44. Eden performed the contemplated procedures as planned, and Eden's
20 Claim was timely submitted to the Plan. The total charges for the medical
21 services, supplies and equipment provided to the Plan Participant exceeded
22 \$19,800.00.

23 45. On or about May 11, 2015, after the medical services, supplies and
24 equipment were provided to the Plan Participant, these defendants breached the
25 implied contract by issuing a drastically reduced payment on Eden's Claim, which
26 does not reflect the agreed upon reimbursement rate. Eden was not provided with
27 any other information that might help it better understand the payment received
28 from these defendants.

1 46. Because Eden's Claim was paid at paid \$490.00 and no further
2 payments were received, the balance still due is an amount exceeding \$19,300.00.

3 47. These defendants acknowledged and accepted financial responsibility
4 for the medical services, supplies and equipment provided to the Plan Participant
5 by Eden, and agreed to pay for those services, supplies and equipment.

6 48. Eden performed all conditions, covenants and promises required in
7 accordance with the terms and conditions of this implied contract by providing the
8 medical services, supplies and equipment to the Plan Participant.

9 49. As a direct and proximate result of these defendants' breach of implied
10 contract, Eden has suffered damages in an amount to be proven at trial, which is
11 currently estimated to be in excess of \$19,300.00.

12 **FIFTH CAUSE OF ACTION**

13 **FOR BREACH OF ORAL CONTRACT**

14 50. Eden realleges and incorporates herein by this reference paragraphs 1
15 through 49, inclusive, of this Complaint.

16 51. Prior to providing services to the Plan Participant, Eden and these
17 defendants entered into an oral agreement whereby Eden agreed to provide
18 medical services, supplies and equipment to the Plan Participant in exchange for
19 which these defendants agreed to pay Eden using its Multiplan contract, after the
20 Plan Participant's deductible was met and before the out of pocket expenses were
21 met.

22 52. Based upon the information provided and the representations of
23 coverage made by the Plan, Eden provided the contemplated medical services,
24 supplies and equipment to the Plan Participant.

25 53. On or about May11, 2015, after the medical services, supplies and
26 equipment were provided to the Plan Participant, these defendants breached the
27 oral agreement by issuing a drastically reduced payment on Eden's Claim. Eden
28

1 was not provided with any other information that might help it better understand
2 the payments received from these defendants.

3 54. Eden performed all conditions, covenants and promises in accordance
4 with the terms and conditions of this oral agreement by providing the medical
5 services, supplies and equipment to the Plan Participant.

6 55. As a direct and proximate result of these defendants' breach of oral
7 contract, Eden suffered damages in an amount to be proven at trial, which is
8 currently estimated to be in excess of \$19,300.00.

9 **SIXTH CAUSE OF ACTION**
10 **FOR NEGLIGENT MISREPRESENTATION**

11 56. Eden realleges and incorporates herein by this reference paragraphs 1
12 through 55, inclusive, of this Complaint.

13 57. Prior to providing services to the Plan Participant, these defendants
14 represented to Eden that the Plan Participant was a covered beneficiary under the
15 Plan. Eden specifically requested and was provided confirmation from the Plan
16 that certain specific contemplated medical procedures required to treat the Plan
17 Participant were covered by the Plan, and that the Plan Participant was eligible to
18 receive medical benefits for such procedures.

19 58. The Plan represented that the medical care rendered to the Plan
20 Participant would be reimbursed using its Multiplan contract, after the Plan
21 Participant's deductible had been met and before the out of pocket expenses were
22 met.

23 59. These defendants and/or their representatives apparently made those
24 representations with the belief that they were true. These representations induced
25 Eden to provide the underlying medical services, supplies and equipment to the
26 Plan Participant, and deterred Eden from making other arrangements for payment.
27 Eden reasonably relied upon these defendants' misrepresentations.
28

1 the date judgment is entered in this action, or the date that all of the Documents
2 are received, whichever comes first; and

3 3. For an award of Eden's attorneys' fees incurred in this action, pursuant
4 to 29 U.S.C. §1132(g)(1).

5 **ON THE SECOND CAUSE OF ACTION**

6 1. For an order or judgment of the Court compelling the Plan
7 Administrator's immediate production of all of the Documents, in accordance
8 with 29 C.F.R. §2560.503-1 paragraphs (g), (h) and (m).

9 **ON THE THIRD CAUSE OF ACTION**

10 1. For an award of compensatory damages against the Plan in an amount
11 to be proven at trial, based, *inter alia*, on the benefits the Plan Participant and Eden
12 were entitled to receive under the Plan; and

13 2. For an award of Eden's attorneys' fees incurred in this action, pursuant
14 to 29 U.S.C. §1132(g)(1).

15 **ON THE FOURTH, FIFTH AND SIXTH CAUSES OF ACTION**

16 1. For compensatory damages in an amount to be determined at trial.

17 **ON ALL CAUSES OF ACTION**

18 1. For an award of interest due at the maximum rate allowed by law;

19 2. For an award of Eden's costs of suit incurred herein; and

20 3. For such other and further relief as the Court deems just and proper.

21
22 Dated: April 5, 2017

JEWETT LAW, PC

23
24 By: /s/ Bradley E. Jewett

Bradley E. Jewett

Attorneys for Plaintiff

EDEN SURGICAL CENTER